

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 30527

STATE OF IDAHO,	)	
	)	2004 Opinion No. 61
Plaintiff-Respondent,	)	
	)	Filed: October 19, 2004
v.	)	
	)	Frederick C. Lyon, Clerk
RICHARD D. PARKER,	)	
	)	SUBSTITUTE OPINION
Defendant-Appellant.	)	THE COURT'S PRIOR
	)	UNPUBLISHED OPINION NO. 546
	)	DATED JULY 16, 2004 IS
	)	HEREBY WITHDRAWN.
	)	

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Appeal from the District Court of the Sixth Judicial District, State of Idaho, Caribou County. Hon. J. William Hart, District Judge.

Judgment of conviction and sentence of 180 days' incarceration, with eighty-seven days suspended, and two years' probation for inattentive driving, vacated, and case remanded for resentencing.

McDermott, Zollinger, Pocatello, for appellant. for appellant.

Hon. Lawrence G. Wasden, Attorney General; Melissa Nicole Moody, Deputy Attorney General, Boise, for respondent.

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LANSING, Chief Judge

This appeal requires that we determine the maximum sentence authorized by statute for the misdemeanor of inattentive driving.

Defendant Richard D. Parker was charged with reckless driving, Idaho Code § 49-1401(1), following a multi-vehicle accident that resulted in bodily injuries and substantial property damage. A jury acquitted Parker of reckless driving but found him guilty of the lesser offense of inattentive driving, I.C. § 49-1401(3). The magistrate sentenced Parker to 180 days in jail, with eighty-seven days suspended and credit for three days served, two years' supervised probation, and a fine of \$300. Parker appeals, contending that his sentence is illegal and, even if legal, constitutes an abuse of discretion.

### **A. Trial Court's Refusal to Withhold Judgment**

We begin with Parker's contention that the magistrate court abused its discretion by imposing sentence instead of withholding judgment and placing Parker on probation, as the court could have done pursuant to I.C. § 19-2601(3). That statute expressly provides that the decision whether to withhold judgment lies within the discretion of the trial court. Therefore, we review the refusal to withhold judgment for abuse of the trial court's discretion. *State v. Geier*, 109 Idaho 963, 965, 712 P.2d 664, 666 (Ct. App. 1985). Such refusal will not be reversed if the trial court had sufficient information to determine that a withheld judgment would be inappropriate. *Id.*

In this case, although Parker apparently had no prior criminal record, the present driving offense was a serious one. His violation caused a multiple-vehicle accident that resulted in severe bodily injuries and substantial financial loss to several people. Given the gravity of the harm caused by this offense, the magistrate court could reasonably conclude that imposition of sentence was necessary for deterrence, retribution, and the protection of society, and that withholding judgment would depreciate the gravity of the offense. Accordingly, we find no abuse of discretion in the magistrate's refusal to withhold judgment.

### **B. Legality of Sentence**

Parker's next contention--that his sentence is illegal--presents an issue of statutory interpretation. A single statute, I.C. § 49-1401,<sup>1</sup> provides the definitions of two misdemeanors,

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<sup>1</sup> Idaho Code § 49-1401 provides:

(1) Any person who drives or is in actual physical control of any vehicle upon a highway, or upon public or private property open to public use, carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property, or who passes when there is a line in his lane indicating a sight distance restriction, shall be guilty of reckless driving and upon conviction shall be punished as provided in subsection (2) of this section.

(2) Every person convicted of reckless driving under this section shall be punished by imprisonment in the county or municipal jail for a period of not less than five (5) days nor more than ninety (90) days, or by a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300), or by both fine and imprisonment. On a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300), or by both fine and imprisonment. The department shall

reckless driving and inattentive driving. It also prescribes the punishment for reckless driving, but is silent concerning punishment for inattentive driving. Subsection (2) of section 49-1401 specifies that the maximum imprisonment for reckless driving is ninety days. Subsection (3) specifies that inattentive driving “shall be considered a lesser offense than reckless driving,” but provides no sentence parameters for inattentive driving. The magistrate consequently concluded that the maximum sentence for inattentive driving is 180 days in jail and a \$300 fine, which is that authorized by I.C. § 18-113(1)<sup>2</sup> for misdemeanors for which no different punishment has been prescribed in the Idaho Code. Parker argues that the legislature cannot have intended the maximum sentence for inattentive driving to be governed by I.C. § 18-113 because that maximum exceeds the permitted sentence for reckless driving, and the legislature has specifically described inattentive driving as “a lesser offense than reckless driving” in I.C. § 49-1401(3).

Judicial interpretation of a statute begins with its literal words. *Thomson v. City of Lewiston*, 137 Idaho 473, 478, 50 P.3d 488, 493 (2002). Those words must be given their plain, usual, and ordinary meaning, and the statute must be construed as a whole. *State v. Hart*, 135

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suspend the driver’s license or privileges of any such person as provided in section 49-326, Idaho Code.

(3) Inattentive driving shall be considered a lesser offense than reckless driving and shall be applicable in those circumstances where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton, or in those cases where the danger to persons or property by the motor vehicle operator’s conduct is slight.

<sup>2</sup> Idaho Code § 18-113 provides:

(1) Except in cases where a different punishment is prescribed in this code, every offense declared to be a misdemeanor, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding three hundred dollars (\$300), or by both.

(2) In addition to any other punishment prescribed for misdemeanors in specific statutes of the Idaho Code, the court may also impose a fine of up to three hundred dollars (\$300). This paragraph shall not apply if the specific misdemeanor statute provides for the imposition of a fine.

Idaho 827, 829, 25 P.3d 850, 852 (2001). If a statute is not ambiguous, an appellate court does not construe it, but simply follows the law as written, *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003), for unless the result is palpably absurd, we must assume that the legislature means what is clearly stated. *Miller v. State*, 110 Idaho 298, 299, 715 P.2d 968, 969 (1986). If the statute is ambiguous, then the construing court's task is to discern the legislative intent. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Knott*, 132 Idaho 476, 478, 974 P.2d 1105, 1107 (1999); *Miller*, 110 Idaho at 299, 715 P.2d at 969. To determine that intent, we not only examine the literal words of the statute, but also consider such factors as the reasonableness of proposed constructions and the public policy behind the statute. *Lopez v. State, Indus. Special Indem. Fund*, 136 Idaho 174, 178, 30 P.3d 952, 956 (2001); *Adamson v. Blanchard*, 133 Idaho 602, 605, 990 P.2d 1213, 1216 (1999); *State v. Paciorek*, 137 Idaho 629, 632, 51 P.3d 443, 446 (Ct. App. 2002). In interpreting a statute, we seek a sensible construction that will avoid an absurd result. *Id.*

We find I.C. § 49-1401 to be ambiguous with respect to the permissible penalty for inattentive driving. On the one hand, as the magistrate held and as the State argues on appeal, the absence of any specified penalty for inattentive driving in section 49-1401 seems to make that offense subject to the default incarceration period for misdemeanors--180 days--provided in I.C. § 18-113(1). On the other hand, such a literal application of the statute appears inconsonant with the legislature's description of inattentive driving as a *lesser* offense than reckless driving, which carries a maximum incarceration of only ninety days for the first offense.<sup>3</sup> We are thus called upon to interpret the statute so as to give effect to the legislative intent as best we can apprehend that intent.

Our consideration of the language chosen by the legislature in I.C. § 49-1401(2) and our obligation to avoid absurd or unreasonable results lead us to conclude that the legislature could not have intended that inattentive driving would carry a greater potential punishment than reckless driving. The legislature not only expressly directed that inattentive driving "shall be considered to be a lesser offense," but also defined the two offenses in such a way that reckless driving encompasses more culpable behavior than does inattentive driving. Reckless driving

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<sup>3</sup> A second offense reckless driving conviction carries a maximum jail sentence of six months. I.C. § 49-1401(2).

includes conduct that is so careless, heedless or lacking in caution “as to endanger or be likely to endanger” a person or property. I.C. § 49-1401(1). Inattentive driving, by contrast, encompasses driving behavior that is merely inattentive, careless or imprudent. From this statutory structure, we cannot deduce that the legislature meant inattentive driving to be subject to a greater penalty than reckless driving. We conclude that by not specifying a different penalty for inattentive driving, the legislature intended that that offense would carry the same maximum period of incarceration as that prescribed in I.C. § 49-1401(2) for reckless driving.<sup>4</sup> Consequently, the 180-day jail sentence imposed on Parker exceeds the statutory maximum.

**C. Conclusion**

The magistrate court did not abuse its discretion by declining to withhold judgment in this case. However, because the court did not correctly perceive the boundaries of its discretion in sentencing and imposed an illegal sentence, we vacate the sentence and remand for resentencing.

Judge PERRY and Judge GUTIERREZ **CONCUR.**

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<sup>4</sup> Whether a second or subsequent conviction for inattentive driving would also subject the offender to suspension of his or her driver’s license as provided in I.C. § 49-1401(2) is beyond the scope of the issue presented in this appeal.